

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA (PHILADELPHIA)

SUZANNE COPLEY,	§	Case No. 2:09-CV-00722
Plaintiff,	§	
	§	
VS.	§	
	§	
WYETH, INC., WYETH	§	
PHARMACEUTICALS, INC., SCHWARZ	§	
PHARMA, INC., SCHWARZ PHARMA,	§	
INC. D/B/A SCHWARZ PHARMA, USA,	§	
SCHWARZ PHARMA, USA, ACTAVIS,	§	
INC., ACTAVIS ELIZABETH, LLC,	§	
Defendants.	§	

**PLAINTIFF'S SUR-RESPONSE TO RESPONSE OF DEFENDANTS  
WYETH, INC. AND WYETH PHARMACEUTICALS INC. TO THE  
ACTAVIS DEFENDANTS' MOTION TO TRANSFER  
AND ALSO SCHWARZ PHARMA, INC. AND SCHWARZ PHARMA USA**

Wyeth and Schwarz are neither movants nor proper respondents to Defendant Actavis' motion to transfer venue. They both filed separate responses neither of which offers any substantive reply nor provides any rebuttal or clarification of any issue or point of law. Wyeth responded only to add that it does not oppose transfer out of its home district. Plaintiff now with perplexity responds both to Wyeth's and Schwarz's pleadings.

It would be, as this Court has commented in a *forum non conveniens* setting, "curiouser and curiouser" were the forum Defendant, Wyeth in this case, to argue for moving venue **far** from its home. *Lony v. E.I. Du Pont de Nemours & Co.*, 935 F.2d 604, 608 (3<sup>rd</sup> Cir. 1991). As Wyeth's website<sup>1</sup> sets forth, Wyeth Pharmaceuticals has its global headquarters in Collegeville, Pennsylvania housing both its commercial and R&D staff. What really could be more convenient for Wyeth?

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[http://www.wyeth.com/careers/pharmaresearch/locations?rid=/wyeth\\_html/home/careers/pharma\\_research/locations/collegeville.html](http://www.wyeth.com/careers/pharmaresearch/locations?rid=/wyeth_html/home/careers/pharma_research/locations/collegeville.html)

Schwarz also responds adding nothing substantive either, but cites two Minnesota cases, neither of which add anything to the present inquiry: *Burnett v. Wyeth Pharmaceutical, Inc.*, Dkt. CIV. 06-4923DWFSRN, 2008 WL 732425 (D. Minn. Mar 17, 2008), slip op., and *Moretti v. Wyeth, Inc.*, Dkt. CIV. 07-3920DWFSRN, 2008 WL 732497 (D. Minn. Mar 17, 2008), slip op. In both *Burnett* and *Moretti*, no party had any substantial connection to Minnesota; Wyeth had only a registered agent there. The Plaintiffs were not only from far away (Texas and Nevada), both admitted they'd sued in the state only hoping to gain advantage of Minnesota law on the statute of limitations.<sup>2</sup>

Most noteworthy, and notably not addressed by any Defendants involved, is that on February 19, 2009 Defendant Schwarz requested this Honorable Court to remove this very case, "from the Philadelphia Court of Common Pleas, Commonwealth of Pennsylvania to the United States District Court for the Eastern District of Pennsylvania and that all further proceedings in this action be held before this Court." This Court granted Defendant's motion and now, not even five (5) months later, Defendant Schwarz is back in this Court agreeing that the case should be moved to the U.S. District Court for the Middle District of Tennessee. Defendant's reasons are for that of convenience, none of which were addressed in Defendant's first motion to remove. Thus, it is clear that Defendant's are not seeking convenience but are forum shopping.

Defendant Wyeth has an enormous presence in the state of Pennsylvania. It has a great wealth of witnesses and documents which are located in the state. The other Defendants'

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<sup>2</sup> In both cases the parties disputed whether in fact Minnesota limitations applied, no matter where the action was brought and all agreed that the forum, if transferred for convenience, did not change the law to be applied.

place of business, witnesses and documents are also located in nearby New Jersey.

Thus, Wyeth and Schwarz', as non-moving defendants, plead their lack of opposition and agreement thereto, for whatever strategic reasons may exist, to a change of venue motion, is neither a public nor private consideration and should not be considered.

Plaintiff respectfully requests this Court to deny Actavis' motion to transfer.

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 10<sup>th</sup> day of July, 2009, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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/s/ William B. Curtis

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